



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Tribett Homeowners Assoc
Mr. Glen Tribett, President
204 Ridgeway Drive
Millwood, WV 25262

DATE: August 3, 2015

ORDER NO.: 8247

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Tribett Homeowners Assoc (hereinafter "Tribett").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Tribett operates a wastewater treatment facility composed of a package plant and polishing pond located in Millwood, Jackson County, West Virginia. Tribett was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550251, on December 9, 2010.
2. On June 4, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Tribett's WV/NPDES permit were observed and documented:
 - a. Section F.1-Tribett failed to properly operate and maintain the facility. Specifically, Tribett allowed duckweed to cover the surface of the pond, the clarifier had not been scraped, and the bar screen contained trash, debris, and dead animals.

- b. Section A.3- Exceedances of Tribett's permit parameters were observed and documented from the 3rd Quarter of 2013 through the 2nd Quarter of 2014 (Table 1).
- c. Section B.3 – Tribett failed to submit Discharge Monitoring Reports (DMRs) within twenty (20) days following the 4th Quarter of 2013.

As a result of the aforementioned violations, Notices of Violation (NOV) Nos. W14-18-018-SJM and W14-18-020-SJM were issued to Tribett.

3. On December 9, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Tribett's WV/NPDES permit were observed and documented:
 - a. Section F.1-Tribett failed to properly operate and maintain the facility. Specifically, the post-aeration pump was not hooked up, the influent pipe was not sealed properly, material was going over the weir into the clarifier, the clarifier walls had not been scraped, and there was a leak prior to the chlorination box.
 - b. Section A.3-Exceedances of Tribett's permit parameters were observed and documented during the 3rd Quarter of 2014 (Table 1).

As a result of the aforementioned violations, NOV Nos. W14-18-035-SJM and W14-18-036-SJM were issued to Tribett.

4. On April 29, 2015, WVDEP personnel and representatives of Tribett met to discuss the terms and conditions of this Order.
5. On May 8 and 28, 2015, WVDEP personnel received financial documents from Tribett. The provided information was used to perform an economic analysis which evaluated Tribett's ability to pay a civil administrative penalty.
6. On July 21, 2015, WVDEP personnel conducted a review of facility records from the time period of the 1st Quarter of 2013 through the 2nd Quarter of 2015. During this review, the following violations of the terms and conditions of Tribett's WV/NPDES permit were observed:
 - a. Section A.3 – Twelve (12) exceedances of Tribett's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations – Five (5)
 - ii. Moderate violations – Four (4)
 - iii. Major violations – Three (3)
 - b. Section B.3 – Tribett failed to submit DMRs within twenty (20) days following the 4th Quarter of 2013, the 4th Quarter of 2014, and the 1st and 2nd Quarters of 2015.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Tribett shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Upon the effective date of this Order, Tribett's operator shall attend the next available Class S certification for Wastewater Treatment Plant Operators course. Alternatively, Tribett shall hire a properly certified Class S operator, in accordance with Section G.3 of the WV/NPDES permit.
3. Within twenty (20) days of the effective date of this Order, Tribett shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Tribett will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110, Registration No. WVG550251 and Order No. 8247. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

4. Because of Tribett's permit violations, Tribett shall be assessed a civil administrative penalty of eleven thousand seventy dollars (\$11,070) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$922.50 due on or before October 1, 2015.
Payment 2 in the amount of \$922.50 due on or before November 1, 2015.
Payment 3 in the amount of \$922.50 due on or before December 1, 2015.
Payment 4 in the amount of \$922.50 due on or before January 1, 2016.
Payment 5 in the amount of \$922.50 due on or before February 1, 2016.

Payment 6 in the amount of \$922.50 due on or before March 1, 2016.
Payment 7 in the amount of \$922.50 due on or before April 1, 2016.
Payment 8 in the amount of \$922.50 due on or before May 1, 2016.
Payment 9 in the amount of \$922.50 due on or before June 1, 2016.
Payment 10 in the amount of \$922.50 due on or before July 1, 2016.
Payment 11 in the amount of \$922.50 due on or before August 1, 2016.
Payment 12 in the amount of \$922.50 due on or before September 1, 2016.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Tribett hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Tribett agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Tribett does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Tribett other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Tribett shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Tribett becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Tribett shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Tribett intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Tribett (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure

amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Tribett of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Tribett to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Tribett, its successors and assigns.
7. This Order shall terminate upon Tribett's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Glen E. Tribett

Mr. Glen Tribett, President
Tribett Homeowners Assoc

8/6/15

Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

Table One: Tribett DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 1st Qtr 2013 through 2nd Qtr 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	X	-
3rd Qtr. 2013	Ammonia Nitrogen	mg/L	3	10.45	248%	-	X	-
3rd Qtr. 2013	BOD	mg/L	5	5.6	12%	X	-	-
1st Qtr. 2014	BOD	mg/L	10	12.9	29%	X	-	-
2nd Qtr. 2014	BOD	mg/L	5	12	140%	-	X	-
3rd Qtr. 2014	Fecal	cnts/100ml	200	6000	2900%	-	-	X
3rd Qtr. 2014	BOD	mg/l	5	25	400%	-	-	X
3rd Qtr. 2014	Ammonia Nitrogen	mg/l	3	11.7	290%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - 1st Qtr 2013 through 2nd Qtr 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						-	X	-
3rd Qtr. 2013	Ammonia Nitrogen	mg/L	6	10.45	74%	X	-	-
2nd Qtr. 2014	BOD	mg/L	10	12	20%	X	-	-
3rd Qtr. 2014	Fecal	cnts/100ml	400	6000	1400%	-	-	X
3rd Qtr. 2014	BOD	mg/l	10	25	150%	-	X	-
3rd Qtr. 2014	Ammonia Nitrogen	mg/l	6	11.7	95%	X	-	-

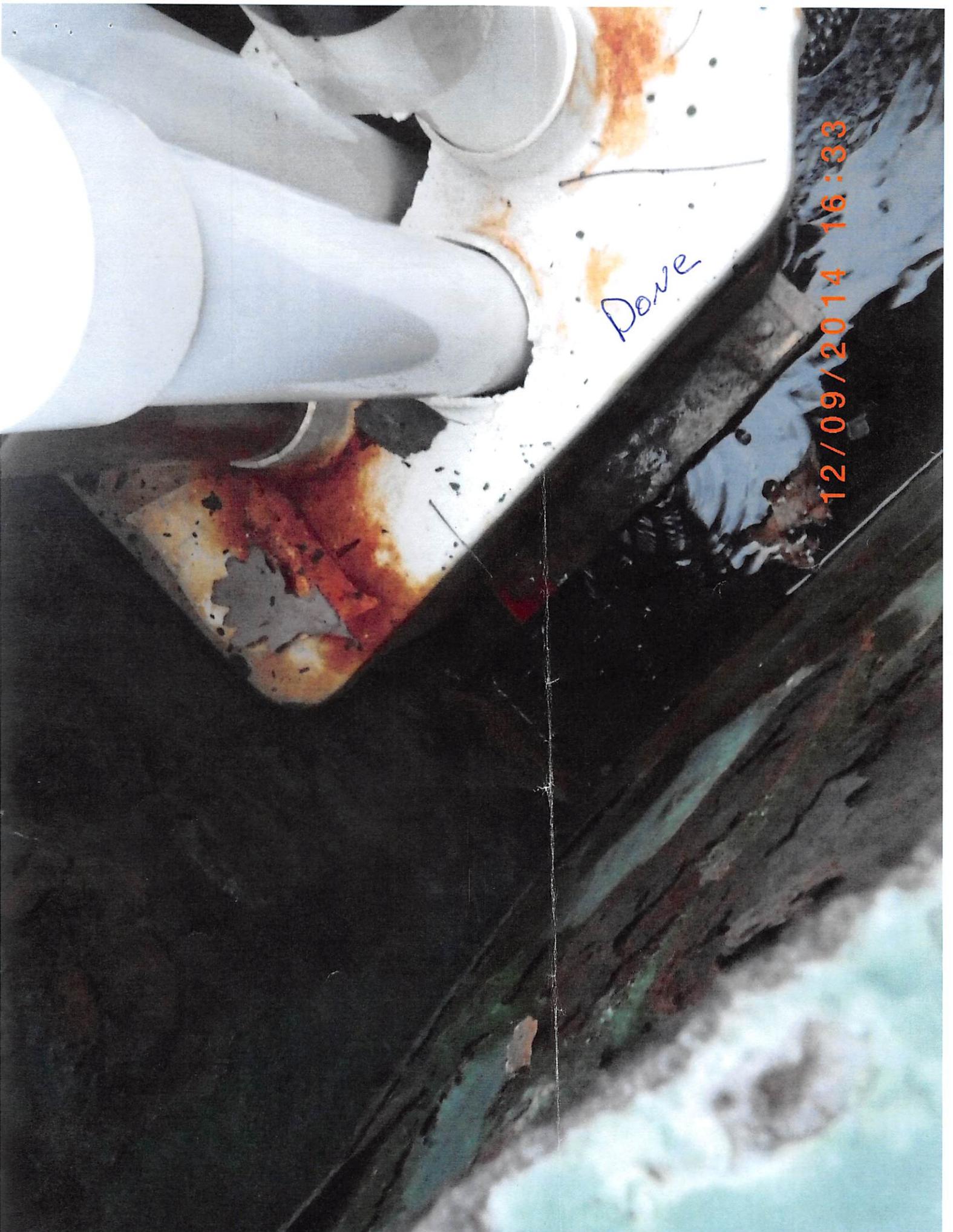
Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	5	4	3



12/09/2014 16:37

PODCAST

DAVE



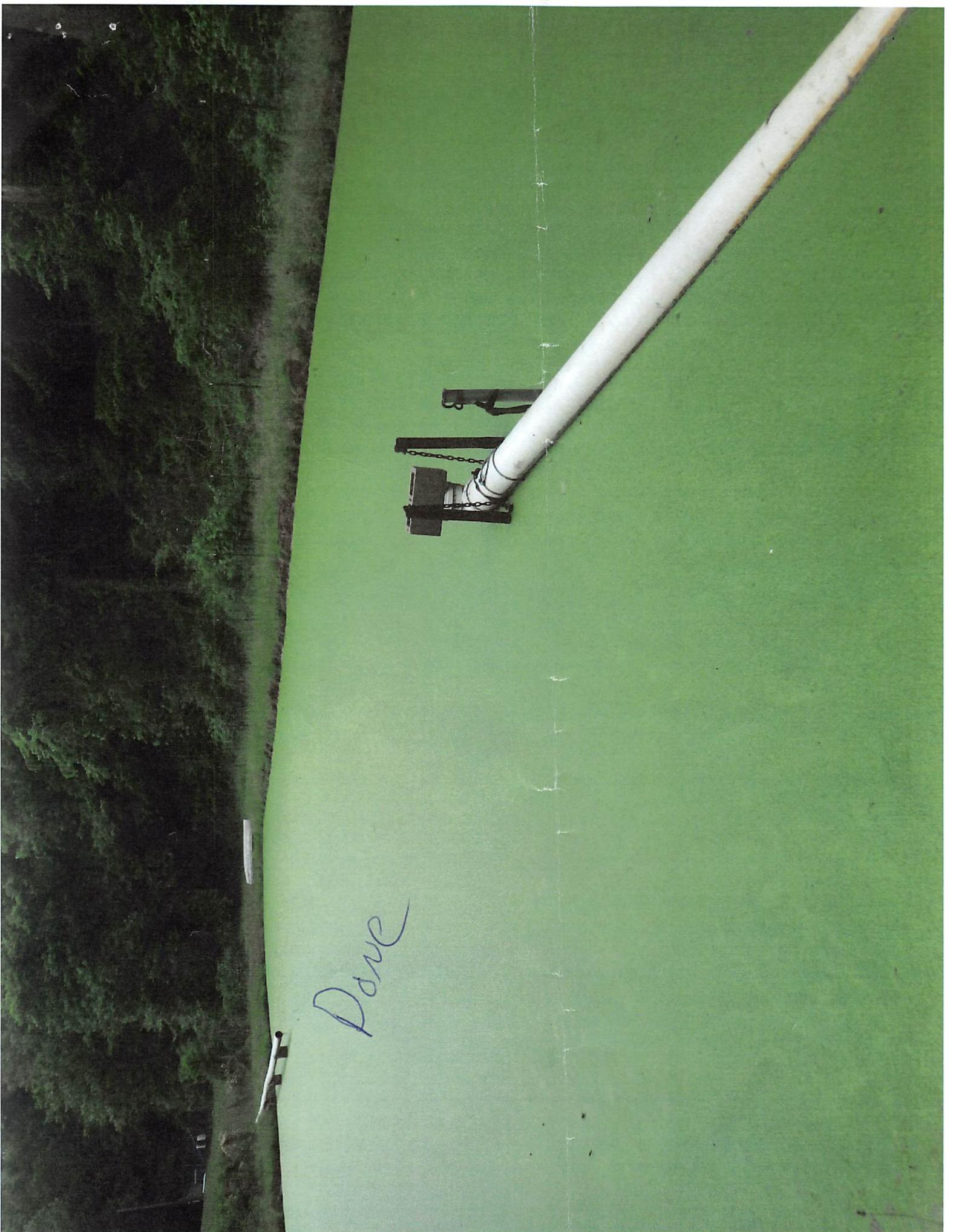
Done

12/09/2014 16:33



Don't

12/09/2014 15:54



Done

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Tribett Homeowners Assoc Receiving Stream: _____

Treatment System Design Maximum Flow: _____ MGD

Treatment System Actual Average Flow: 0.0056 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#													
			2a	3a	6ai	6aii	6aiii	6b								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	0								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	0								
d)	Length of Time	1 to 3	1	2	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	0								
Average Potential for Harm Factor			1	1.2	1	1	1	0.4	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	1	2	3	3								

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$400		\$400
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)		40	(\$10,640)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$2,660)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,660)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$15,530)
Penalty =			\$11,070

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$400
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$400
Comments: Avoided cost of DMR sampling/submittal for 2 quarters.	